in section 61(a) of the Internal Revenue Code of 1986, exceeding 3 times the median household income for that preceding calendar year, as most recently reported by the Bureau of the Census; and

(4) has not assigned, granted, or conveyed, and is not under an obligation by contract or law to assign, grant, or convey, a license or other ownership interest in the application concerned to an entity that, in the calendar year preceding the calendar year in which the applicable fee is being paid, had a gross income, as defined in section 61(a) of the Internal Revenue Code of 1986, exceeding 3 times the median household income for that preceding calendar year, as most recently reported by the Bureau of the Census.

(b) APPLICATIONS RESULTING FROM PRIOR EMPLOYMENT.—An applicant is not considered to be named on a previously filed application for purposes of subsection (a)(2) if the applicant has assigned, or is under an obligation by contract or law to assign, all ownership rights in the application as the result of the applicant's previous employment.

(c) FOREIGN CURRENCY EXCHANGE RATE.—If an applicant's or entity's gross income in the preceding calendar year is not in United States dollars, the average currency exchange rate, as reported by the Internal Revenue Service, during that calendar year shall be used to determine whether the applicant's or entity's gross income exceeds the threshold specified in paragraphs[1] (3) or (4) of subsection (a).

(d) INSTITUTIONS OF HIGHER EDUCATION.—For purposes of this section, a micro entity shall include an applicant who certifies that—

(1) the applicant's employer, from which the applicant obtains the majority of the applicant's income, is an institution of higher education as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)); or

(2) the applicant has assigned, granted, conveyed, or is under an obligation by contract or law, to assign, grant, or convey, a license or other ownership interest in the particular applications to such an institution of higher education.

(e) DIRECTOR'S AUTHORITY.—In addition to the limits imposed by this section, the Director may, in the Director's discretion, impose income limits, annual filing limits, or other limits on who may qualify as a micro entity pursuant to this section if the Director determines that such additional limits are reasonably necessary to avoid an undue impact on other patent applicants or owners or are otherwise reasonably necessary and appropriate. At least 3 months before any limits proposed to be imposed pursuant to this subsection take effect, the Director shall inform the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate of any such proposed limits.

(Added and amended Pub. L. 112–29, §§ 10(g)(1), 20(j), Sept. 16, 2011, 125 Stat. 318, 335.)

[1] So in original. Probably should be ''paragraph''.

AMENDMENT OF SECTION

Pub. L. 112–29, § 20(j), (l), Sept. 16, 2011, 125 Stat. 335, provided that, effective upon the expiration of the 1-year period beginning on Sept. 16, 2011, and applicable to proceedings commenced on or after that effective date, this section is amended by striking ''of this title'' each place that term appears. See 2011 Amendment note below.

REFERENCES IN TEXT

Section 61(a) of the Internal Revenue Code of 1986, referred to in subsec. (a)(3), (4), is classified to section 61(a) of Title 26, Internal Revenue Code.

AMENDMENTS

2011—Subsec. (a). Pub. L. 112–29, § 20(j), struck out ''of this title'' after ''purposes'' in introductory provisions.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by section 20(j) of Pub. L. 112–29 effective upon the expiration of the 1-year period beginning on Sept. 16, 2011, and applicable to proceedings commenced on or after that effective date, see section 20(*l*) of Pub. L. 112–29, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section effective on Sept. 16, 2011, see section 10(i)(1) of Pub. L. 112–29, set out as a Fee Setting Authority note under section 41 of this title.

CHAPTER 12—EXAMINATION OF APPLICATION

AMENDMENT OF ANALYSIS

Pub. L. 112–29, § 3(j)(5), (n), Sept. 16, 2011, 125 Stat. 291, 293, provided that, effective upon the expiration of the 18-month period beginning on Sept. 16, 2011, and applicable to certain applications for patent and any patents issuing thereon, this analysis is amended by amending item 134 to read ''Appeal to the Patent Trial and Appeal Board.'' and item 135 to read ''Derivation proceedings.'' See 2011 Amendment note below.

AMENDMENTS

2011—Pub. L. 112–29, § 3(j)(5), Sept. 16, 2011, 125 Stat. 291, amended items 134 and 135 generally, substituting ''Appeal to the Patent Trial and Appeal Board'' for ''Appeal to the Board of Patent Appeals and Interferences'' in item 134 and ''Derivation proceedings'' for ''Interferences'' in item 135.

1984—Pub. L. 98–622, title II, § 204(b)(2), Nov. 8, 1984, 98 Stat. 3388, substituted ''Patent Appeals and Interferences'' for ''Appeals'' in item 134.

§ 131. Examination of application

The Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor.

(July 19, 1952, ch. 950, 66 Stat. 801; Pub. L. 106–113, div. B, § 1000(a)(9) [title IV, § 4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536,

1501A–582; Pub. L. 107–273, div. C, title III, § 13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 36 (R.S. 4893).

The first part is revised in language and amplified. The phrase ''and that the invention is sufficiently useful and important'' is omitted as unnecessary, the requirements for patentability being stated in sections 101, 102 and 103.

AMENDMENTS

2002—Pub. L. 107–273 made technical correction to directory language of Pub. L. 106–113. See 1999 Amendment note below.

1999—Pub. L. 106–113, as amended by Pub. L. 107–273, substituted ''Director'' for ''Commissioner'' in two places.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106–113, set out as a note under section 1 of this title.

§ 132. Notice of rejection; reexamination

(a) Whenever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application; and if after receiving such notice, the applicant persists in his claim for a patent, with or without amendment, the application shall be reexamined. No amendment shall introduce new matter into the disclosure of the invention.

(b) The Director shall prescribe regulations to provide for the continued examination of applications for patent at the request of the applicant. The Director may establish appropriate fees for such continued examination and shall provide a 50 percent reduction in such fees for small entities that qualify for reduced fees under section 41(h)(1) of this title.

(July 19, 1952, ch. 950, 66 Stat. 801; Pub. L. 106–113, div. B, § 1000(a)(9) [title IV, §§ 4403, 4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A–560, 1501A–582; Pub. L. 107–273, div. C, title III, § 13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906; Pub. L. 112–29, § 20(j), Sept. 16, 2011, 125 Stat. 335.)

AMENDMENT OF SECTION

Pub. L. 112–29, § 20(j), (l), Sept. 16, 2011, 125 Stat. 335, provided that, effective upon the expiration of the 1-year period beginning on Sept. 16, 2011, and applicable to proceedings commenced on or after that effective date, this section is amended by striking ''of this title'' each place that term appears. See 2011 Amendment note below.

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 51 (R.S. 4903, amended Aug. 5, 1939, ch. 452, § 1, 53 Stat. 1213).

The first paragraph of the corresponding section of existing statute is revised in language and amplified to incorporate present practice; the second paragraph of the existing statute is placed in section 135.

The last sentence relating to new matter is added but represents no departure from present practice.

AMENDMENTS

2011—Subsec. (b). Pub. L. 112–29 struck out ''of this title'' after ''41(h)(1)''.

2002—Pub. L. 107–273 made technical correction to directory language of Pub. L. 106–113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)]. See 1999 Amendment note below.

1999—Pub. L. 106–113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)], as amended by Pub. L. 107–273, substituted ''Director'' for ''Commissioner''.

Pub. L. 106–113, § 1000(a)(9) [title IV, § 4403], designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–29 effective upon the expiration of the 1-year period beginning on Sept. 16, 2011, and applicable to proceedings commenced on or after that effective date, see section 20(*l*) of Pub. L. 112–29, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, § 1000(a)(9) [title IV, § 4405(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–560, provided that: ''The amendments made by section 4403 [amending this section]—

''(1) shall take effect on the date that is 6 months after the date of the enactment of this Act [Nov. 29, 1999], and shall apply to all applications filed under section 111(a) of title 35, United States Code, on or after June 8, 1995, and all applications complying with section 371 of title 35, United States Code, that resulted from international applications filed on or after June 8, 1995; and

''(2) do not apply to applications for design patents under chapter 16 of title 35, United States Code.''

Amendment by section 1000(a)(9) [title IV, § 4732(a)(10)(A)] of Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106–113, set out as a note under section 1 of this title.

§ 133. Time for prosecuting application

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Director in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Director that such delay was unavoidable.

(July 19, 1952, ch. 950, 66 Stat. 801; Pub. L. 106–113, div. B, § 1000(a)(9) [title IV, § 4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A–582; Pub. L. 107–273, div. C, title III, § 13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 37 (R.S. 4894, amended (1) Mar. 3, 1897, ch. 391, § 4, 29 Stat. 692, 693, (2) July 6, 1916, ch. 225, § 1, 39 Stat. 345, 347–8, (3) Mar. 2, 1927, ch. 273, § 1, 44 Stat. 1335, (4) Aug. 7, 1939, ch. 568, 53 Stat. 1264).

The opening clause of the corresponding section of existing statute is omitted as having no present day meaning or value and the last two sentences are omitted for inclusion in section 267. The notice is stated as given or mailed. Language is revised.

AMENDMENTS

2002—Pub. L. 107–273 made technical correction to directory language of Pub. L. 106–113. See 1999 Amendment note below.

1999—Pub. L. 106–113, as amended by Pub. L. 107–273, substituted ''Director'' for ''Commissioner'' in two places.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106–113, set out as a note under section 1 of this title.

§ 134. Appeal to the Board of Patent Appeals and Interferences

(a) PATENT APPLICANT.—An applicant for a patent, any of whose claims has been twice rejected, may appeal from the decision of the primary examiner to the Board of Patent Appeals and Interferences, having once paid the fee for such appeal.

(b) PATENT OWNER.—A patent owner in any reexamination proceeding may appeal from the final rejection of any claim by the primary examiner to the Board of Patent Appeals and Interferences, having once paid the fee for such appeal.

(c) THIRD-PARTY.—A third-party requester in an inter partes proceeding may appeal to the Board of Patent Appeals and Interferences from the final decision of the primary examiner favorable to the patentability of any original or proposed amended or new claim of a patent, having once paid the fee for such appeal.

(July 19, 1952, ch. 950, 66 Stat. 801; Pub. L. 98–622, title II, § 204(b)(1), Nov. 8, 1984, 98 Stat. 3388; Pub. L. 106–113, div. B, § 1000(a)(9) [title IV, § 4605(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–570; Pub. L. 107–273, div. C, title III, §§ 13106(b), 13202(b)(1), Nov. 2, 2002, 116 Stat. 1901; Pub. L. 112–29, §§ 3(j)(1), (3), 7(b), Sept. 16, 2011, 125 Stat. 290, 313.)

AMENDMENT OF SECTION

Pub. L. 112–29, § 7(b), (e), Sept. 16, 2011, 125 Stat. 313, 315, provided that, effective upon the expiration of the 1-year period beginning on Sept. 16, 2011, and applicable to proceedings commenced on or after that effective date, with certain exceptions, this section is amended:

(1) in subsection (b), by striking ''any reexamination proceeding'' and inserting ''a reexamination''; and

(2) by striking subsection (c).

See 2011 Amendment notes below.

Pub. L. 112–29, § 3(j)(1), (3), (n), Sept. 16, 2011, 125 Stat. 290, 293, provided that, effective upon the expiration of the 18-month period beginning on Sept. 16, 2011, and applicable to certain applications for patent and any patents issuing thereon, this section is amended by:

(1) striking ''Board of Patent Appeals and Interferences'' each place it appears and inserting ''Patent Trial and Appeal Board''; and

(2) amending the section catchline to read as follows: ''Appeal to the Patent Trial and Appeal Board''.

See 2011 Amendment notes below.

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 57 (R.S. 4909 amended (1) Mar. 2, 1927, ch. 273, § 5, 44 Stat. 1335, 1336, (2) Aug. 5, 1939, ch. 451, § 2, 53 Stat. 1212).

Reference to reissues is omitted in view of the general provision in section 251. Minor changes in language are made.

AMENDMENTS

2011—Pub. L. 112–29, § 3(j)(3), amended section catchline generally. Prior to amendment, section catchline read as follows: ''Appeal to the Board of Patent Appeals and Interferences''.

Subsec. (a). Pub. L. 112–29, § 3(j)(1), substituted ''Patent Trial and Appeal Board'' for ''Board of Patent Appeals and Interferences''.

Subsec. (b). Pub. L. 112–29, § 7(b)(1), substituted ''a reexamination'' for ''any reexamination proceeding''.

Pub. L. 112–29, § 3(j)(1), substituted ''Patent Trial and Appeal Board'' for ''Board of Patent Appeals and Interferences''.

Subsec. (c). Pub. L. 112–29, § 7(b)(2), struck out subsec. (c). Prior to amendment, text read as follows: ''A third-party requester in an inter partes proceeding may appeal to the Board of Patent Appeals and Interferences from the final decision of the primary examiner favorable to the patentability of any original or proposed amended or new claim of a patent, having once paid the fee for such appeal.''

2002—Subsecs. (a), (b). Pub. L. 107–273, § 13202(b)(1), substituted ''primary examiner'' for ''administrative patent judge''.

Subsec. (c). Pub. L. 107–273, § 13202(b)(1), substituted ''primary examiner'' for ''administrative patent judge''.

Pub. L. 107–273, § 13106(b), struck out at end ''The third-party requester may not appeal the decision of the Board of Patent Appeals and Interferences.''

1999—Pub. L. 106–113 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: ''An applicant for a patent, any of whose claims has been twice rejected, may appeal from the decision of the primary examiner to the Board of Patent Appeals and Interferences, having once paid the fee for such appeal.''

1984—Pub. L. 98–622 substituted ''Patent Appeals and Interferences'' for ''Appeals'' in section catchline and text.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by section 3(j)(1), (3) of Pub. L. 112–29 effective upon the expiration of the 18-month period beginning on Sept. 16, 2011, and applicable to certain applications for patent and any patents issuing thereon, see section 3(n) of Pub. L. 112–29, set out as an Effective Date of 2011 Amendment; Savings Provisions note under section 100 of this title.

Amendment by section 7(b) of Pub. L. 112–29 effective upon the expiration of the 1-year period beginning on Sept. 16, 2011, and applicable to proceedings commenced on or after that effective date, with certain exceptions, see section 7(e) of Pub. L. 112–29, set out as a note under section 6 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–273, div. C, title III, § 13106(d), Nov. 2, 2002, 116 Stat. 1901, provided that: ''The amendments made by this section [amending this section and sections 141 and 315 of this title] apply with respect to any reexamination proceeding commenced on or after the date of enactment of this Act [Nov. 2, 2002].''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 107–273, div. C, title III, § 13202(d), Nov. 2, 2002, 116 Stat. 1902, provided that: ''The amendments made by section 4605(b), (c), and (e) of the Intellectual Property and Communications Omnibus Reform Act, as enacted by section 1000(a)(9) of Public Law 106–113 [amending this section and sections 141 and 145 of this title], shall apply to any reexamination filed in the United States Patent and Trademark Office on or after the date of enactment of Public Law 106–113 [Nov. 29, 1999].''

Amendment by Pub. L. 106–113 effective Nov. 29, 1999, and applicable to any patent issuing from an original application filed in the United States on or after that date, see section 1000(a)(9) [title IV, § 4608(a)] of Pub. L. 106–113, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–622 effective three months after Nov. 8, 1984, see section 207 of Pub. L. 98–622, set out as a note under section 41 of this title.

§ 135. Interferences

(a) Whenever an application is made for a patent which, in the opinion of the Director, would interfere with any pending application, or with any unexpired patent, an interference may be declared and the Director shall give notice of such declaration to the applicants, or applicant and patentee, as the case may be. The Board of Patent Appeals and Interferences shall determine questions of priority of the inventions and may determine questions of patentability. Any final decision, if adverse to the claim of an applicant, shall constitute the final refusal by the Patent and Trademark Office of the claims involved, and the Director may issue a patent to the applicant who is adjudged the prior inventor. A final judgment adverse to a patentee from which no appeal or other review has been or can be taken or had shall constitute cancellation of the claims involved in the patent, and notice of such cancellation shall be endorsed on copies of the patent distributed after such cancellation by the Patent and Trademark Office.

(b)(1) A claim which is the same as, or for the same or substantially the same subject matter as, a claim of an issued patent may not be made in any application unless such a claim is made prior to one year from the date on which the patent was granted.

(2) A claim which is the same as, or for the same or substantially the same subject matter as, a claim of an application published under section 122(b) of this title may be made in an application filed after the application is published only if the claim is made before 1 year after the date on which the application is published.

(c) Any agreement or understanding between parties to an interference, including any collateral agreements referred to therein, made in connection with or in contemplation of the termination of the interference, shall be in writing and a true copy thereof filed in the Patent and Trademark Office before the termination of the interference as between the said parties to the agreement or understanding. If any party filing the same so requests, the copy shall be kept separate from the file of the interference, and made available only to Government agencies on written request, or to any person on a showing of good cause. Failure to file the copy of such agreement or understanding shall render permanently unenforceable such agreement or understanding and any patent of such parties involved in the interference or any patent subsequently issued on any application of such parties so involved. The Director may, however, on a showing of good cause for failure to file within the time prescribed, permit the filing of the agreement or understanding during the six-month period subsequent to the termination of the interference as between the parties to the agreement or understanding.

The Director shall give notice to the parties or their attorneys of record, a reasonable time prior to said termination, of the filing requirement of this section. If the Director gives such notice at a later time, irrespective of the right to file such agreement or understanding within the six-month period on a showing of good cause, the parties may file such agreement or understanding within sixty days of the receipt of such notice.

Any discretionary action of the Director under this subsection shall be reviewable under section 10 of the Administrative Procedure Act.

(d) Parties to a patent interference, within such time as may be specified by the Director by regulation, may determine such contest or any aspect thereof by arbitration. Such arbitration shall be governed by the provisions of title 9 to the extent such title is not inconsistent with this section. The parties shall give notice of any arbitration award to the Director, and such award shall, as between the parties to the arbitration, be dispositive of the issues to which it relates. The arbitration award shall be unenforceable until such notice is given. Nothing in this subsection shall preclude the Director from determining patentability of the invention involved in the interference.

(July 19, 1952, ch. 950, 66 Stat. 801; Pub. L. 87–831, Oct. 15, 1962, 76 Stat. 958; Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 98–622, title I, §105, title II, §202, Nov. 8, 1984, 98 Stat. 3385, 3386; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §§4507(11), 4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A–566, 1501A–582; Pub. L. 107–273, div. C, title III, §13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1906; Pub. L. 112–29, §§3(i), 20(j), Sept. 16, 2011, 125 Stat. 289, 335.)

AMENDMENT OF SECTION

Pub. L. 112–29, §20(j), (l), Sept. 16, 2011, 125 Stat. 335, provided that, effective upon the expiration of the 1-year period beginning on Sept. 16, 2011, and applicable to proceedings commenced on or after that effective date, this section is amended by striking ''of this title'' each place that term appears. See 2011 Amendment note below.

Pub. L. 112–29, §3(i), (n), Sept. 16, 2011, 125 Stat. 289, 293, provided that, effective upon the expiration of the 18-month period beginning on Sept. 16, 2011, and applicable to certain applications for patent and any patents issuing thereon, this section is amended to read as follows:

§135. Derivation proceedings

(a) Institution of Proceeding.—An applicant for patent may file a petition to institute a derivation proceeding in the Office. The petition shall set forth with particularity the basis for finding that an inventor named in an earlier application derived the claimed invention from an inventor named in the petitioner's application and, without authorization, the earlier application claiming such invention was filed. Any such petition may be filed only within the 1-year period beginning on the date of the first publication of a claim to an invention that is the same or substantially the same as the earlier application's claim to the invention, shall be made under oath, and shall be supported by substantial evidence. Whenever the Director determines that a petition filed under this subsection demonstrates that the standards for instituting a derivation proceeding are met, the Director may institute a derivation proceeding. The determination by the Director whether to institute a derivation proceeding shall be final and nonappealable.

(b) Determination by Patent Trial and Appeal Board.—In a derivation proceeding instituted under

subsection (a), the Patent Trial and Appeal Board shall determine whether an inventor named in the earlier application derived the claimed invention from an inventor named in the petitioner's application and, without authorization, the earlier application claiming such invention was filed. In appropriate circumstances, the Patent Trial and Appeal Board may correct the naming of the inventor in any application or patent at issue. The Director shall prescribe regulations setting forth standards for the conduct of derivation proceedings, including requiring parties to provide sufficient evidence to prove and rebut a claim of derivation.

(c) Deferral of Decision.—The Patent Trial and Appeal Board may defer action on a petition for a derivation proceeding until the expiration of the 3-month period beginning on the date on which the Director issues a patent that includes the claimed invention that is the subject of the petition. The Patent Trial and Appeal Board also may defer action on a petition for a derivation proceeding, or stay the proceeding after it has been instituted, until the termination of a proceeding under chapter 30, 31, or 32 involving the patent of the earlier applicant.

(d) Effect of Final Decision.—The final decision of the Patent Trial and Appeal Board, if adverse to claims in an application for patent, shall constitute the final refusal by the Office on those claims. The final decision of the Patent Trial and Appeal Board, if adverse to claims in a patent, shall, if no appeal or other review of the decision has been or can be taken or had, constitute cancellation of those claims, and notice of such cancellation shall be endorsed on copies of the patent distributed after such cancellation.

(e) Settlement.—Parties to a proceeding instituted under subsection (a) may terminate the proceeding by filing a written statement reflecting the agreement of the parties as to the correct inventors of the claimed invention in dispute. Unless the Patent Trial and Appeal Board finds the agreement to be inconsistent with the evidence of record, if any, it shall take action consistent with the agreement. Any written settlement or understanding of the parties shall be filed with the Director. At the request of a party to the proceeding, the agreement or understanding shall be treated as business confidential information, shall be kept separate from the file of the involved patents or applications, and shall be made available only to Government agencies on written request, or to any person on a showing of good cause.

(f) Arbitration.—Parties to a proceeding instituted under subsection (a) may, within such time as may be specified by the Director by regulation, determine such contest or any aspect thereof by arbitration. Such arbitration shall be governed by the provisions of title 9, to the extent such title is not inconsistent with this section. The parties shall give notice of any arbitration award to the Director, and such award shall, as between the parties to the arbitration, be dispositive of the issues to which it relates. The arbitration award shall be unenforceable until such notice is given. Nothing in this subsection shall preclude the Director from determining the patentability of the claimed inventions involved in the proceeding.

See 2011 Amendment note below.

HISTORICAL AND REVISION NOTES

The first paragraph is based on Title 35, U.S.C., 1946 ed., § 52 (R.S. 4904 amended (1) Mar. 2, 1927, ch. 273, § 4, 44 Stat. 1335, 1336, (2) Aug. 5, 1939, ch. 451, § 1, 53 Stat. 1212).

The first paragraph states the existing corresponding statute with a few changes in language. An explicit statement that the Office decision on priority constitutes a final refusal by the Office of the claims involved, is added. The last sentence is new and provides that judgment adverse to a patentee constitutes cancellation of the claims of the patent involved after the judgment has become final, the patentee has a right of appeal (sec. 141) and is given a right of review by civil action (sec. 146).

The second paragraph is based on Title 35, U.S.C., 1946 ed., § 51, (R.S. 4903, amended Aug. 5, 1939, ch. 452, § 1, 53 Stat. 1213). Changes in language are made.

REFERENCES IN TEXT

Section 10 of the Administrative Procedure Act, referred to in subsec. (c), is section 10 of act June 11, 1946, ch. 324, 60 Stat. 243, which was repealed by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 632, and reenacted by the first section thereof as chapter 7 (§ 701 et seq.) of Title 5, Government Organization and Employees.

AMENDMENTS

2011—Pub. L. 112–29, § 3(i), amended section generally. Prior to amendment, section related to interferences.

Subsec. (b)(2). Pub. L. 112–29, § 20(j), struck out ''of this title'' after ''122(b)''.

2002—Subsecs. (a), (c), (d). Pub. L. 107–273 made technical correction to directory language of Pub. L. 106–113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)]. See 1999 Amendment notes below.

1999—Subsec. (a). Pub. L. 106–113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)], as amended by Pub. L. 107–273, substituted ''Director'' for ''Commissioner'' wherever appearing.

Subsec. (b). Pub. L. 106–113, § 1000(a)(9) [title IV, § 4507(11)], designated existing provisions as par. (1) and added par. (2).

Subsecs. (c), (d). Pub. L. 106–113, § 1000(a)(9) [title IV, § 4732(a)(10)(A)], as amended by Pub. L. 107–273, substituted ''Director'' for ''Commissioner'' wherever appearing.

1984—Subsec. (a). Pub. L. 98–622, § 202, amended subsec. (a) generally, substituting '', an interference may be declared and the Commissioner shall give notice of such declaration to the applicants, or applicant and patentee, as the case may be'' for ''he shall give notice thereof to the applicants, or applicant and patentee, as the case may be'' and substituting provisions vesting jurisdiction for determining questions of interference in the Board of Patent Appeals and Interferences for provisions vesting such jurisdiction in a board of patent interferences.

Subsec. (d). Pub. L. 98–622, § 105, added subsec. (d).

1975—Subsecs. (a), (c). Pub. L. 93–596 substituted ''Patent and Trademark Office'' for ''Patent Office'' wherever appearing.

1962—Pub. L. 87–831 designated first and second pars. as subsecs. (a) and (b) and added subsec. (c).

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by section 3(i) of Pub. L. 112–29 effective upon the expiration of the 18-month period beginning on Sept. 16, 2011, and applicable to certain applications for patent and any patents issuing thereon, see section 3(n) of Pub. L. 112–29, set out as an Effective Date of 2011 Amendment; Savings Provisions note under section 100 of this title.

Amendment by section 20(j) of Pub. L. 112–29 effective upon the expiration of the 1-year period beginning on Sept. 16, 2011, and applicable to proceedings commenced on or after that effective date, see section 20(*l*) of Pub. L. 112–29, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(9) [title IV, § 4507(11)] of Pub. L. 106–113 effective Nov. 29, 2000, and applicable only to applications (including international applications designating the United States) filed on or after that date, see section 1000(a)(9) [title IV, § 4508] of Pub. L. 106–113, as amended, set out as a note under section 10 of this title.

Amendment by section 1000(a)(9) [title IV, § 4732(a)(10)(A)] of Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106–113, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 105 of Pub. L. 98–622 applicable to all United States patents granted before, on, or after Nov. 8, 1984, and to all applications for United States patents pending on or filed after that date, except as otherwise provided, see section 106 of Pub. L. 98–622, set out as a note under section 103 of this title.

Amendment by section 202 of Pub. L. 98–622 effective three months after Nov. 8, 1984, see section 207 of Pub. L. 98–622, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of Title 15, Commerce and Trade.

SAVINGS PROVISIONS

Provisions of 35 U.S.C. 135, as in effect on the day before the expiration of the 18-month period beginning on Sept. 16, 2011, apply to each claim of certain applications for patent, and certain patents issued thereon, for which the amendments made by section 3 of Pub. L. 112–29 also apply, see section 3(n)(2) of Pub. L. 112–29, set out as an Effective Date of 2011 Amendment; Savings Provisions note under section 100 of this title.

CHAPTER 13—REVIEW OF PATENT AND TRADEMARK OFFICE DECISIONS

AMENDMENT OF ANALYSIS

Pub. L. 112–29, § 3(j)(6), (n), Sept. 16, 2011, 125 Stat. 291, 293, provided that, effective upon the expiration of the 18-month period beginning on Sept. 16, 2011, and applicable to certain applications for patent and any patents issuing thereon, item 146 of this analysis is amended to read ''Civil action in case of derivation proceeding.'' See 2011 Amendment note below.

AMENDMENTS

2011—Pub. L. 112–29, § 3(j)(6), Sept. 16, 2011, 125 Stat. 291, amended item 146 generally, substituting ''Civil action in case of derivation proceeding'' for ''Civil action in case of interference''.

1982—Pub. L. 97–164, title I, § 163(b)(1), Apr. 2, 1982, 96 Stat. 49, substituted ''Court of Appeals for the Federal Circuit'' for ''Court of Customs and Patent Appeals'' in item 141.

1975—Pub. L. 93–596, § 1, Jan. 2, 1975, 88 Stat. 1949, substituted ''PATENT AND TRADEMARK OFFICE'' for ''PATENT OFFICE'' in chapter heading.

§ 141. Appeal to Court of Appeals for the Federal Circuit

An applicant dissatisfied with the decision in an appeal to the Board of Patent Appeals and Interferences under section 134 of this title may appeal the decision to the United States Court of Appeals for the Federal Circuit. By filing such an appeal the applicant waives his or her right to proceed under section 145 of this title. A patent owner, or a third-party requester in an inter partes reexamination proceeding, who is in any reexamination proceeding dissatisfied with the final decision in an appeal to the Board of Patent Appeals and Interferences under section 134 may appeal the decision only to the United States Court of Appeals for the Federal Circuit. A party to an interference dissatisfied with the decision of the Board of Patent Appeals and Interferences on the interference may appeal the decision to the United States Court of Appeals for the Federal Circuit, but such appeal shall be dismissed if any adverse party to such interference, within twenty days after the appellant has filed notice of appeal in accordance with section 142 of this title, files notice with the Director that the party elects to have all further proceedings conducted as provided in section 146 of this title. If the appellant does not, within thirty days after the filing of such notice by the adverse party, file a civil action under section 146, the decision appealed from shall govern the further proceedings in the case.

(July 19, 1952, ch. 950, 66 Stat. 802; Pub. L. 97–164, title I, § 163(a)(7), (b)(2), Apr. 2, 1982, 96 Stat. 49, 50; Pub. L. 98–622, title II, § 203(a), Nov. 8, 1984, 98 Stat. 3387; Pub. L. 106–113, div. B, § 1000(a)(9) [title IV, §§ 4605(c), 4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A–571, 1501A–582; Pub. L. 107–273, div. C, title III, §§ 13106(c), 13206(b)(1)(B), Nov. 2, 2002, 116 Stat. 1901, 1906; Pub. L. 112–29, § 7(c)(1), Sept. 16, 2011, 125 Stat. 314.)

AMENDMENT OF SECTION

Pub. L. 112–29, § 7(c)(1), (e), Sept. 16, 2011, 125 Stat. 314, 315, provided that, effective upon the expiration of the 1-year period beginning on Sept. 16, 2011, and applicable to proceedings commenced on or after that effective date, with certain exceptions, this section is amended to read as follows:

§ 141. Appeal to Court of Appeals for the Federal Circuit

(a) Examinations.—An applicant who is dissatisfied with the final decision in an appeal to the Patent Trial and Appeal Board under section 134(a) may appeal the Board's decision to the United States Court of Appeals for the Federal Circuit. By filing such an appeal, the applicant waives his or her right to proceed under section 145.

(b) Reexaminations.—A patent owner who is dissatisfied with the final decision in an appeal of a reexamination to the Patent Trial and Appeal Board under section 134(b) may appeal the Board's decision only to the United States Court of Appeals for the Federal Circuit.

(c) Post-Grant and Inter Partes Reviews.—A party to an inter partes review or a post-grant review who is dissatisfied with the final written decision of the Patent Trial and Appeal Board under section 318(a) or 328(a) (as the case may be) may appeal the Board's decision only to the United States Court of Appeals for the Federal Circuit.

(d) Derivation Proceedings.—A party to a derivation proceeding who is dissatisfied with the final de-